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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 LAURENCE PONCE DeGARCIA,  
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13 Petitioner,  
14  
15 v.  
16 UNITED STATES OF AMERICA,  
17  
18 Respondent.

CASE NO: 94-CR-0371 W  
07-CV-2099 W

ORDER DENYING (1) MOTION  
TO PROCEED IN FORMA  
PAUPERIS [DOC. NO. 38], AND  
(2) MOTION FOR  
APPOINTMENT OF COUNSEL  
[DOC. NO. 39]

19 Pending before the Court are Petitioner's motions to proceed in forma pauperis  
20 ("IFP"), and for appointment of counsel. For the reasons outlined below, the Court  
21 **DENIES** as moot the IFP motion, and **DENIES** the motion for appointment of counsel.

22 **I. MOTION TO PROCEED IFP.**

23 Petitioner has filed this matter under 28 U.S.C. § 2255. Filing fees are not  
24 required for petitioners seeking relief under section 2255. See Rule 3, Rules Governing  
25 Section 2255 Proceedings for the United States District Courts, advisory committee  
26 notes. Because Petitioner is not required to pay a filing fee, the Court **DENIES** his  
27 motion to proceed IFP as moot.  
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1 **II. MOTION FOR APPOINTMENT OF COUNSEL.**

2 The Court may appoint counsel for financially eligible persons seeking habeas  
3 relief if “the interests of justice so require.” 28 U.S.C. § 3006A (a)(2)(B). “In deciding  
4 whether to appoint counsel in a habeas proceeding, the district court must evaluate the  
5 likelihood of success on the merits as well as the ability of the petitioner to articulate his  
6 claims pro se in light of the complexity of the legal issues involved.” Weygandt v. Look,  
7 718 F.2d 952, 954 (9th Cir. 1983); see also Rand v. Rowland, 113 F.3d 1520, 1525 (9th  
8 Cir. 1997). Additionally, appointed counsel is mandated when (1) necessary for  
9 effective discovery, or (2) an evidentiary hearing may occur. Weygandt, 718 F.2d at  
10 954.

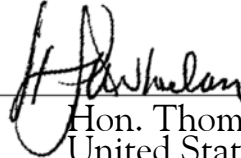
11 Petitioner’s motion for appointment of counsel consists of a three-sentence letter  
12 that simply requests counsel. Petitioner has failed to demonstrate that counsel should  
13 be appointed in this case. Accordingly, the Court **DENIES WITHOUT PREJUDICE**  
14 Petitioner’s request for appointment of counsel.

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16 **III. CONCLUSION.**

17 In light of the foregoing, the Court **DENIES** as moot Petitioner’s motion for leave  
18 to proceed IFP [Doc. No. 38], and **DENIES WITHOUT PREJUDICE** the motion for  
19 appointment of counsel [Doc. No. 39].

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21 **IT IS SO ORDERED.**

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24 DATED: December 3, 2007

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27 Hon. Thomas J. Whelan  
28 United States District Judge

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